

10.0 CONSULTATION AND COORDINATION

10.1 Public Involvement Program

The public involvement program consists of having a series of meetings throughout the feasibility study/EA process.

10.2 Cooperating Agency Team

Cooperative Agencies include:

- U.S. Army Corps of Engineers
- Montana Department of Natural Resources and Conservation
- Montana Department of Environmental Quality

These agencies were selected because they have direct permitting responsibilities.

10.3 Meetings

To date, two public involvement meetings have been held:

- July 28, 2009 meeting with Cartersville Irrigation District and other interested parties in Forsyth, Montana.
- November 3, 2009 meeting with the Rosebud/Treasure County Wildlife Association and other interested parties in Forsyth, Montana.

10.4 Endangered Species Act Consultation

The U.S. Fish and Wildlife Service has been contacted regarding Endangered Species Act Consultation.

10.5 Coordination and Compliance with Other Applicable Laws, Regulations, and Policies

Analysis and implementation of the Cartersville Project requires consistency, coordination and compliance with multiple federal and state laws, regulations, executive orders, and policies. The following have known application to the Cartersville Project.

10.5.1 Clean Water Act of 1977

The Clean Water Act is the principal law governing pollution control and water quality of navigable waterways of the United States. Section 402 of the Act establishes a National Pollution Discharge Elimination System permitting program to regulate the point source discharge of pollutants into waters of the United States. Both Montana and North Dakota administer state-level programs pursuant to authority delegated by the EPA.

Section 404, administered by the USACE with oversight from EPA, is another permitting program that regulates activities of the placement of dredged or fill materials into waters of the United States. The USACE issues nationwide permits on a state, regional, or nationwide basis for similar activities that cause only minimal adverse environmental effects both individually and cumulatively. Individual permits may also be issued for specific activities on specific water bodies under Section 404. It is anticipated that the USACE will determine that an individual Section 404 permit is required for the Intake Project. If so, a Montana State Water Quality Certification Permit (Section 401) would also be required. The USACE will complete the 404(b)1 analysis for the Cartersville Project.

10.5.2 Farmland Protection Policy Act of 1995

The purpose of this Act is to ensure that impacts to prime or unique farmlands are considered in federal projects. It requires federal agencies to consider alternative actions that could lessen impacts and to ensure that their actions are compatible with state, local government, and private programs to protect prime and unique farmland. The Natural Resources Conservation Service is responsible for administering this Act. Farmlands were considered in the Cartersville Project analysis using the key indicators of changes in farm acreage and production. Prime and unique farmlands would be protected to the extent possible during implementation of the Cartersville Project consistent with the Act.

10.5.3 Fish and Wildlife Coordination Act of 1958

The Fish and Wildlife Coordination Act (FWCA, 48 Stat. 401, as amended; 16 U.S.C. 661 et seq.) provides a procedural framework for the orderly consideration of fish and wildlife conservation measures to be incorporated into federal projects and federally permitted or licensed water resource development projects. Agencies that construct, permit, or license projects impacting a water body must consult with the Service and FWP, the state agency having jurisdiction over fish and wildlife resources. Full consideration must be given to the recommendations made through this consultation process.

Section 2 states that fish and wildlife conservation shall receive equal consideration with other project purposes and will be coordinated with other features of water resource development projects. The FWCA

specifically authorizes the Secretary of the Interior to prepare a report and recommendations on the fish and wildlife aspects of projects, including mitigation. The FWCA report provides input to preparation of draft environmental impact statements.

The USFWS and FWP have been working closely with the Corps and Reclamation to initiate and implement studies, surveys, gather and analyze data and contribute to reports regarding fish passage in the Yellowstone River since 1994. This continuous input into the decision making process reduces the need for a technical 2(b) FWCA report to prevent or reduce the adverse impacts to fish and wildlife. Therefore, there will be no FWCA report issued for the project. The final NEPA documents will provide preventive measures to avoid impacts and mitigation to offset impacts that are unavoidable. Consultation with the Service under Section 7(a)(2) of the ESA will also provide conservation measures to avoid and minimize adverse impacts.

10.5.4 Migratory Bird Treaty Act and Executive Order 13186

Under the provisions of this Act it is unlawful "by any means or manner to pursue, hunt, take, capture [or] kill" any migratory birds except as permitted by regulations issued by the USFWS. Migratory birds include all native birds in the United States with the exception of non-migratory species managed by states. The USFWS has defined "take" to mean "pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture or collect" any migratory bird or any part, nest, or egg of any migratory bird (50 *Code of Federal Regulations* Section 10.12). Project level compliance with this law would be accomplished through specific environmental commitments for all of the action alternatives.

10.5.5 National Historic Preservation Act of 1966

The Act establishes protection of historic properties as federal policy in cooperation with states, tribes, local governments, and the public. Historic properties are those buildings, structures, sites, objects, and districts, or properties of traditional religious and cultural importance to Native Americans, determined to be eligible for inclusion in the National Register of Historic Places. Section 106 of the Act requires federal agencies to consider the effects of proposed actions on historic properties and gives the Advisory Council on Historic Preservation an opportunity to comment. Reclamation is responsible for consultation with the SHPO and/or Tribal Historic Preservation Offices, tribes, applicants, interested parties, and local governments regarding federal undertakings. Compliance with this law would be accomplished through specific environmental commitments for all of the action alternatives.

10.5.6 Rivers and Harbors Appropriation Act of 1899

Under Section 10 of the Act, the construction of any structure in or over any navigable water of the United States, the excavating from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. This Cartersville Project would be implemented with design measures deemed compatible with the Act. However, Cartersville Project design features requiring recommendation and approval would be reviewed by the USACE for permitting consideration in compliance with the Act.

10.5.7 Executive Order 13112 for Invasive Species

In 1999, an executive order was issued to prevent the introduction of invasive species and to provide for their control. It directs federal agencies to identify applicable actions and to use programs and authorities to minimize the economic, ecological, and human health impacts caused by invasive species. To meet the intent of this order, the Cartersville Project includes environmental commitments to prevent and control the spread of invasive species.

10.5.8 Other Executive Orders

Executive Order 11988 (Floodplain Management) requires federal agencies to avoid developments on floodplains whenever possible or to minimize potential harm to the floodplains. Executive Order 11990 (Protection of Wetlands) directs federal agencies to avoid destruction, loss, or degradation of wetlands. Executive Order 13007 (Indian Sacred Sites) orders federal agencies to accommodate Indian tribes' requirements for access to and ceremonial use of sacred sites on public lands and to avoid damaging the physical integrity of such sites. Executive Order 12898 (Environmental Justice) directs federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. Compliance with these orders was considered in the development of action alternatives in this EA.

10.5.9 State Water Rights

Montana waters belong to the state, with ownership on behalf of all state citizens. Because water belongs to the state, water rights holders do not own the water; they have a right to use the water within state guidelines. Water rights in Montana are guided by the prior appropriation doctrine, or first in time, first in right. A person's right to use a specific quantity of water depends on when the use first began. The first person to use water from a specific source established the first right, the second established a right to the remaining water and so on. Water rights holders are limited to the amount of water that can be beneficially used. Beneficial uses of water include agricultural purposes, domestic, fish and wildlife, industrial, mining, municipal, power, and recreational uses.

The Montana Water Use Act passed July 1, 1973, changed water rights administration by requiring a statewide adjudication process on all water right claims existing at that time. It also established a permit system for obtaining water rights for new or additional water developments, created an authorization system for changing water rights and a centralized records system, and provided a system to reserve water for future consumptive uses and maintain minimum instream flows for water quality and fish and wildlife. Senate Bill 76 and House Bill 22 further defined the adjudication process and established a funding mechanism to complete statewide adjudication in 2015.

The Cartersville Irrigation District holds the following unadjudicated water rights in Montana totaling 425.55 cfs (42KJ 177092 00).

10.5.10 Montana Environmental Policy Act

State agencies on the Cooperating Agency Team provided input for compliance with the Montana Environmental Policy Act (MEPA). MEPA was passed in 1971 instituting a policy requiring state agencies to consider the environmental, social, cultural and economic impacts of proposals prior to project approval. The purpose of MEPA is to foster state government decisions that are informed, accountable, open to public participation, and balanced. MEPA gives a community the ability to provide input into decision making and help resolve issues before they become a problem. No other law allows consideration of such issues. The agencies may adopt the Cartersville Project EA completed by the co-leads or complete further documentation as they see fit to comply with the MEPA process.

10.5.11 Stream Protection Act

Any agency or subdivision of federal, state, county, or city government proposing a project that may affect the bed or banks of any stream in Montana for any project including the construction of new facilities or the modification, operation, and maintenance of an existing facility that may affect the natural existing shape and form of any stream or its banks or tributaries must comply with this act. The purpose of the Act is to protect and preserve fish and wildlife resources and to maintain streams and rivers in their natural or existing state. FWP administers the law. Their concerns regarding fish, wildlife and riverine environments have been addressed in this document.

10.5.12 Short-Term Water Quality Standards for Turbidity (318)

Any person, agency, or entity, both public and private, initiating construction activity that will cause short term or temporary violations of state surface water quality standards for turbidity requires a state permit. The purpose of the permit is to provide a short term water quality turbidity standard for construction activities, so that construction is carried out in accordance with conditions prescribed by the Montana

Department of Environmental Quality (MT DEQ), to protect water quality and to minimize sedimentation. MT DEQ administers the permit and their concerns regarding water quality, sedimentation and the Cartersville Project have been addressed in this EA.

10.5.13 Montana Land-Use License of Easement on Navigable Waters

Any entity proposing a project on lands below the low water mark of navigable waters requires a state license. Projects include the construction, placement, or modification of a structure or improvements in, over, below, or above a navigable stream. The purpose of the law is to protect riparian area and the navigable status of the water body and to provide for the beneficial use of state lands for public and private purposes in a manner that will provide revenues without harming the long term capability of the land or restricting the original commercial navigability. The Department of Natural Resources and Conservation (DNRC) administers the law, and their concerns have been addressed in Lands and Vegetation and Recreation sections in this EA. A historic land use easement for the dam including any modification resulting from this project will be filed for and take place when all construction is final. A land-use license covers the construction phase of the project.

10.5.14 Stormwater Discharge General Permits

Any person, agency, or entity, either public or private, proposing a construction, industrial, mining, or other defined activity that has a discharge of storm water into surface waters must obtain a permit. Under the authority of the Montana Water Quality Act, permit authorization is typically obtained under a Montana Pollutant Discharge Elimination System "General Permit." A permit is generally required for construction activity that will disturb one or more acres, including clearing, grading, and excavating activities.

The purpose of the law is to prevent degradation of surface waters from pollutants; such as sediment, waste materials, industrial chemicals or materials, heavy metals, and petroleum products; to protect existing water quality and to implement and monitor the effectiveness of Best Management Practices (erosion and sediment controls, etc.) used to reduce pollutant loads. The MT DEQ administers the permit. Their concerns regarding water quality, sedimentation and the overall project have been addressed in Hydrology and Geomorphology, Surface Water Quality, and Lands and Vegetation section in this EA.

10.5.15 401 Water Quality Certification for Other Federal Permits and Licenses

Under Section 401 of the federal Clean Water Act, states and tribes can review and approve, condition, or deny all federal permits or licenses that might result in a discharge to state or tribal waters, including wetlands. The major federal licenses and permits subject to Section 401 are Section 402 and 404 permits (in non-delegated states), Federal Energy Regulatory Commission hydropower licenses, and Rivers and

Harbors Act Section 9 and 10 permits. States and tribes may choose to waive their Section 401 certification authority.

States and tribes make their decisions to deny, certify, or condition permits or licenses primarily by ensuring the activity will comply with state water quality standards. In addition, states and tribes look at whether the activity will violate effluent limitations, new source performance standards, toxic pollutants, and other water resource requirements of state/tribal law or regulation. The Section 401 review allows for better consideration of state-specific concerns.

10.6 List of Preparers

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10.7 Distribution List

The following entities received an Executive Summary with a compact disk containing an electronic copy of this document.

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| Jim Darling | Montana Fish Wildlife & Parks, Helena |
| Matt Jaeger | Montana Fish Wildlife & Parks, Miles City |
| Ken Frazer | Montana Fish Wildlife & Parks, Billings |
| Brad Schmitz | Montana Fish Wildlife & Parks, Miles City |
| Mark McNearney | Montana Fish Wildlife & Parks, Helena |
| John Little | Montana Fish Wildlife & Parks, Miles City |
| Pam Ash | Cartersville Irrigations District, Forsyth |
| Burt Williams | Nature Conservancy, Billings |
| Cathy Juhas | U.S. Army Corps of Engineers, Billings |
| Jeff Ryan | Montana Department of Environmental Quality, Helena |
| Toney Ott | U.S. Environmental Protection Agency, Denver |
| Paula A. Seliski | Rosebud/Treasure County Wildlife Association, Forsyth |
| Don Youngbauer | Yellowstone River Conservation District Council, Forsyth |
| Marc Aberg | Montana Department of Natural Resources and Conservation, Miles City |
| Chuck Dalby | Montana Department of Natural Resources and Conservation, Helena |
| George Jordan | U.S. Fish and Wildlife Service, Billings |
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